

Subpart B—Rulemaking Procedures

§211.11 Processing of petitions for rulemaking.

(a) *General.* Each petition for rulemaking filed as prescribed in §§211.7 and 211.9 is referred to the head of the office responsible for the subject matter of the petition to review and recommend appropriate action to the Administrator. No public hearing or oral argument is held before the Administrator decides whether the petition should be granted. However, a notice may be published in the FEDERAL REGISTER inviting written comments concerning the petition. Each petition shall be granted or denied not later than six months after its receipt by the Docket Clerk.

(b) *Grants.* If the Administrator determines that a rulemaking petition complies with the requirements of §211.9 and that rulemaking is justified, he initiates a rulemaking proceeding by publishing an advance notice or notice of proposed rulemaking in the FEDERAL REGISTER.

(c) *Denials.* If the Administrator determines that a rulemaking petition does not comply with the requirements of §211.9 or that rulemaking is not justified, he denies the petition. If the petition pertains to railroad safety, the Administrator may also initiate an informal safety inquiry under §211.61.

(d) *Notification; closing of docket.* Whenever the Administrator grants or denies a rulemaking petition, a notice of the grant or denial is mailed to the petitioner. If the petition is denied, the proceeding is terminated and the docket for that petition is closed.

§211.13 Initiation and completion of rulemaking proceedings.

The Administrator initiates all rulemaking proceedings on his own motion by publishing an advance notice of proposed rulemaking or a notice of proposed rulemaking in the FEDERAL REGISTER. However, he may consider the recommendations of interested persons or other agencies of the United States. A separate docket is established and maintained for each rulemaking proceeding. Each rulemaking proceeding shall be completed not later than 12

months after the initial notice in that proceeding is published in the FEDERAL REGISTER. However, if it was initiated as the result of the granting of a rulemaking petition, the rulemaking proceeding shall be completed not later than 12 months after the petition was filed as prescribed in §§211.7 and 211.9.

§211.15 Notice and participation.

(a) Except as provided in paragraph (c) of this section, or when the Administrator finds for good cause that notice is impractical, unnecessary, or contrary to the public interest (and incorporates the findings and a brief statement of the reasons therefore in the rules issued), an advance notice or notice of proposed rulemaking is published in the FEDERAL REGISTER and interested persons are invited to participate in the rulemaking proceedings with respect to each substantive rule.

(b) Unless the Administrator determines that notice and public rulemaking proceedings are necessary or desirable, interpretive rules, general statements of policy, and rules relating to organization, procedure, or practice, including those relating to agency management or personnel, are prescribed as final without notice or other public rulemaking proceedings.

(c) An advance notice or notice of proposed rulemaking is issued and interested persons are invited to participate in rulemaking proceedings with respect only to those procedural and substantive rules of general applicability relating to public property, loans, grants, benefits, or contracts which the Administrator has determined to be of substantial public interest.

§211.17 Publication and contents of notices.

Each advance notice or notice of proposed rulemaking is published in the FEDERAL REGISTER and includes—

(a) A statement of the time, place and nature of the proposed rulemaking proceeding;

(b) A reference to the authority under which it is issued;

(c) A description of the subjects or issues involved or the substance or terms of the proposed rule;

(d) A statement of the time within which written comments must be submitted and the required number of copies; and

(e) A statement of how and to what extent interested persons may participate in the proceeding.

§ 211.19 Petitions for extensions of time to comment.

(a) Any person may petition the Administrator for an extension of time to submit comments in response to an advance notice or notice of proposed rulemaking. The petition must be received by the FRA Docket Clerk not later than 10 days before expiration of the time stated in the notice and must contain reference to the FRA docket number for the proceeding involved. The filing of the petition does not automatically extend the time for petitioner's comments.

(b) The Administrator grants the petition only if the petitioner shows a substantive interest in the proposed rule and good cause for the extension, and if time permits and the extension is in the public interest. Extensions will not be granted unless time permits and will not exceed one month. If an extension is granted, it is granted as to all persons and a notice of the extension is published in the FEDERAL REGISTER.

[41 FR 54181, Dec. 13, 1976, as amended at 64 FR 70195, Dec. 16, 1999]

§ 211.21 Consideration of comments received.

All timely comments are considered before final action is taken on a rulemaking proposal. Late-filed comments will be considered so far as possible without incurring additional expense or delay.

§ 211.23 Additional public proceedings.

The Administrator may conduct other public proceedings that he finds necessary or desirable. For example, he may invite interested persons to present oral arguments, participate in conferences, or appear at informal hearings.

§ 211.25 Hearings.

(a) A hearing will be held if required by statute or the Administrator finds it necessary or desirable.

(b) Except for statutory hearings required to be on the record—

(1) Hearings are fact-finding proceedings, and there are no formal pleadings or adverse parties;

(2) Any rule issued in a proceeding in which a hearing is held is not based exclusively on the record of the hearing; and

(3) Hearings are conducted in accordance with section 553 of title 5, U.S.C.; section 556 and 557 of title 5 do not apply to hearings held under this part.

(c) The Administrator conducts or designates a representative to conduct any hearing held under this part. The Chief Counsel serves or designates a member of his staff to serve as legal officer at the hearing.

§ 211.27 Publication of adopted rules and withdrawal of notices.

Whenever the Administrator adopts a final rule or withdraws an advance notice or notice of proposed rulemaking, the final rule or a notice of withdrawal is published in the FEDERAL REGISTER.

§ 211.29 Petitions for reconsideration of a final rule.

(a) Any person may petition the Administrator for reconsideration of any rule issued under this part. Except for good cause shown, such a petition must be submitted not later than 60 days after publication of the rule in the FEDERAL REGISTER, or 10 days prior to the effective date of the rule, whichever is the earlier. The petition must contain a brief statement of the complaint and an explanation as to why compliance with the rule is not possible, is not practicable, is unreasonable, or is not in the public interest.

(b) If the petitioner requests consideration of additional facts, he must state the reason they were not presented to the Administrator within the allotted time.

(c) The Administrator does not consider repetitious petitions.

(d) Unless the Administrator specifically provides otherwise, and publishes notice thereof in the FEDERAL REGISTER, the filing of a petition under